licence in such a case is granted under contractual conditions, one of which is that a well-behaved licensee shall not be treated as a trespasser until the event which he has paid to see is over, and until he has reasonable time thereafter to depart."

Therefore the duration of the licence is to be determined by the intention of the parties, which in turn may be inferred from the circumstances. The inference may be that the licence is to continue permanently as in *Plimmer's* case and in *Lee Eng Teh's* case or until a reasonable time to withdraw from the land has been allowed to the licensee as in the *Winter Garden's* case. On the facts of this case, and on a proper construction being given, as of course it should be given, to clause 4 of the agreement, I am of opinion that the tenancy is a monthly tenancy which as ordinary and unrestricted monthly tenancies are, indefinite in duration (see *Bowen* v. *Anderson* [12] and *Mellows* v. *Low* [13]) until, in this case, made definite by the happening of the contingency therein contractually provided for i.e. until the plaintiff had offered to sell the land to the defendant, and thereafter in the event of a refusal to buy by the defendant, by a month's notice. Consequently I am of the view that in the absence of any offer to sell the land to the defendant, plaintiff's notice to quit on which he relied did not have the effect either at law or in equity of terminating the defendant's tenancy.

The appeal is allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Gibbs & Co.; N. Sharma.*

NAFSIAH v. ABDUL MAJID

[O.C.J. (Sharma J.) May 5, 1969]
[Malacca — Civil Suit No. 48 of 1965]

Practice and Procedure — Jurisdiction — High Court — Muslims — Marriage — Breach of promise — Administration of Muslim Law Enactment, 1959 — Courts Ordinance, 1948 — Courts of Judicature Act, 1964.

In this action for damages for breach of promise to marry, the defendant raised as a preliminary point, the jurisdiction of the High Court to entertain the claim. The parties were Muslims. Section 40(3)(b) of the Administration of Muslim Law Enactment, 1959 gives the court of Kathi Besar jurisdiction to determine all proceedings in which the parties profess the Muslim religion and which relate to marriage. It was argued that the provision excluded the jurisdiction of the High Court to try the claim.

Held, in dismissing the preliminary objection: the Courts of Judicature Act, 1964 which by virtue of section 4 therein, prevail over any other written law other than the Constitution, expressly bestows upon the High Court jurisdiction to estertain claims for damages arising out of breach of promise to marry, and such jurisdiction is not excluded merely by reason that the parties to the action are Muslims.

CIVIL SUIT.

Ee Yew Lin for the plaintiff.

G.R.T. Chelvam for the defendant.

Sharma J. (delivering oral ruling): In this case the defendant has, in his statement of defence in paragraph 4 thereof, raised the question of jurisdiction of this court to entertain the claim of the plaintiff.

At the start of these proceedings I consequently asked counsel for the defendant to argue this point as a preliminary point so that if he did succeed the suit could be disposed of under the provisions of O. 25 r. 3 of the Rules of the Supreme Court, 1957. Reliance was placed by Mr. Chelvam on the provisions of section 40(3)(b) of the Administration of Muslim Law Enactment, 1959 of the State of Malacca, the relevant provisions of which read as follows:—

"The court of the Kathi Besar shall in its civil jurisdiction hear and determine all actions and proceedings in which all the parties profess the Muslim religion and which relate to marriage."

It was urged upon me that both the plaintiff and the defendant were prosecuted under section 149(3) of the Administration of Muslim Law Enactment, 1959 before the Kathi Besar in Malacca and convicted and the plaintiff's claim now before the court should have been brought in those proceedings before the Kathi Besar's court. A suggestion was also made that the matter is *res judicata*. I do not see any strength in that argument. The prosecution in the Kathi Besar's court was under section 149(3) of the Administration of Muslim Law Enactment, 1959 and no question of any issues relating to civil rights of the parties could arise in those proceedings.

I find no provision in the Administration of Muslim Law Enactment, 1959 that the Kathi Besar has the exclusive jurisdiction in all matters relating to or arising out of the marriage of Muslims. The Courts of Judicature Act, 1964 expressly gives jurisdiction to this court under section 24(a) and 25(1)(a) to try matters arising in the present suit which is nothing more than a suit for damages arising out of a breach of promise to marry.

Further section 109 of the Courts Ordinance, 1948 which has not been repealed by the Courts of Judicature Act, 1964 clearly stipulates that in the case of any conflict or any inconsistency between the provisions of the Courts Ordinance, 1948 and the provisions of any other written law in force at the commencement of the Courts Ordinance, 1948 the provisions of the Courts Ordinance, 1948 should prevail. While it is true that the Administration of Muslim Law Enactment No. 1 of

1959 was not in force at the time of the coming into force of the Courts Ordinance, 1948 the High Court has undoubtedly jurisdiction to deal with all matters relating to the rights of the parties who come before it, and there is no provision in any law which I can find, and no law has been referred to me, which excludes the jurisdiction of this court. I also find that section 4 of the Courts of Judicature Act, 1964 provides that the provisions of the said Act must prevail in the event of any inconsistency or conflict between that Act and the provisions of any other written law other than the Constitution in force at the commencement of the Courts of Judicature Act 1964.

I consequently, hold that this court has jurisdiction to try the present suit.

Objection dismissed.

Solicitors: *Ee Yew Lin & Son; Chelvam & Co.*

NAFSIAH v. ABDUL MAJID (No. 2)

[O.C.J. (Sharma J.) May 6, 1969]
[Malacca — Civil Suit No. 48 of 1965]

Family Law — Marriage — Breach of promise — Muslims — Seduction as aggravation of damages — Validity of promise to marry by married man.

Muslim Law — Marriage — Breach of promise — Man already married — Personal law.

The plaintiff brought an action for damages for breach of promise to marry, contending that damages should be aggravated by reason of the fact that she had been seduced by the defendant. It was urged upon the court that because the plaintiff knew that the defendant was already married, even if the defendant had made any promise to marry the plaintiff such promise was void *ab initio.*

Held: (1) the plaintiff's knowledge that the defendant was already married did not invalidate the promise as the defendant was, under his own personal law, entitled to more than one wife;

(2) there was sufficient evidence that the defendant had promised to marry the plaintiff. Damages was assessed at $1,200.

CIVIL SUIT.

Ee Yew Lin for the plaintiff.

G.R.T. Chelvam for the defendant.

Sharma J. (delivering oral judgment): In this case the plaintiff claims damages for breach of contract of marriage. According to her statement of claim the promise was made by the defendant first on the 19th of August, 1963 and this promise was subsequently reduced into writing by a document produced as Exhibit A1 (A2 is a certified translation in English thereof). The plaintiff also alleges that she was seduced by the defendant and as a result of such seduction she became pregnant and a son was born to her through the defendant on 29th July, 1964. The defendant in his defence denies ever having made any promise to marry her and ever having seduced her or being the lawful father of the child which was born to her. The defence alleges that the agreement dated 30th June, 1964 (Exhibit A1) is void *ab initio* for the defendant was forced to sign the same under duress.

It is admitted that the parties profess the Muslim religion. I have heard the evidence both for the plaintiff and the defendant. The onus of duress lay upon the defendant. In the light of the evidence which was produced Mr. Chelvam who appeared on behalf of the defendant informed the court, and I think very rightly, that he was not relying upon the plea of duress. I find it very difficult in the light of the documents which have been produced by the plaintiff, and which admittedly have been signed by the defendant, to believe that the defendant was forced into signing the same. I consequently disbelieve the evidence of the defendant and find that he voluntarily and willingly executed Exhibit A1 and wrote all the subsequent letters of his own free will. I further find no reason whatsoever to disbelieve Haji Thamby bin Haji Abdullah (P.W.3) who appears to be an independent witness.

The fact remains that a child was born to the plaintiff on 29th July, 1964. I have not been asked to determine the paternity of the child. The suit is a simple suit for damages for breach of contract of marriage. I do not propose to deal with the question of the paternity of the child or the question of maintenance which the said child may be entitled to. These reliefs have not been claimed in this suit and I do not propose to make any order or observation in respect thereof. The parties are quite at liberty to file separate proceedings in respect of such reliefs.

At the start of the proceedings yesterday I had asked counsel for the plaintiff whether he was basing the plaintiff's claim on a breach of promise of marriage alone and he informed me that his claim was based not only on a breach of promise of marriage but also for damages arising out of seduction of the plaintiff by the defendant. As I understand it, the action for damages for seduction is an action for the consequential damage arising from the loss of service resulting from the act complained of. Such an action will fail unless some loss of service can be shown. Such an action only purports to give recompense for the loss of service and is generally brought by the parent for injury to his or her child. In this particular case, however, the action is brought by the